Order Dismissing Appeal

UNITED STATES COURT OF APPEALS

SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the twenty-second day of October, one thousand nine hundred and seventy-four.

REV. DONALD L. JACKSON,
Plaintiff-Appellant,

v.

THE STATLER FOUNDATION, CAMERION BAIRD FOUNDATION, THE BAIRD FOUNDATION, WILLIAM J. CONNERS FOUNDATION, JAMES H. CUMMINGS FOUNDATION, HARRY DENT FAMILY FOUNDATION, FERGUSON FOUNDATION, INC., JOSEPHINE GOODYEAR FOUNDATION, JULIA R. and ESTELLE L. FOUNDATION, INC., THE MARGARET L. WENDT FOUNDATION, THE FARNY R. and GRACE K. WURLITZER INC., FRED L. EMERSON FOUNDATION INC., JUDGE WILLIAM J. REGAN, HON. MARIO A. PROCACCINO, HON. LOUIS J. LEFKOWITZ, Attorney General, State of New York and HON. GEORGE P. SHULTZ,
Defendants-Appellees.

It is hereby ordered that the motion made herein by counsel for the The Ferguson Foundation, Inc. the Cameron Baird Foundation, and the Julia R. and Estelle L. Foundation, Inc. appellees/ by notice of motion dated September

Order Dismissing Appeal

24, 1974 to dismiss the appeal from the United States District Court for the Western District of New York for lack of jurisdiction be and it hereby is granted.

A. DANIEL FUSARO,
Clerk,

By EDWARD J. GUARDRO,
Senior Deputy Clerk.

Before: Hon. Leonard P. Moore,
Hon. James L. Oakes,
Hon. William H. Timbers,
Circuit Judges

Amended Complaint
(Civil Action No. 1971-592)

STATE OF NEW YORK
UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

REV. DONALD L. JACKSON,

Petitioner,

vs.

THE STATLER FOUNDATION, Statler Hilton Hotel, Buffalo, New York; CAMERON BAIRD FOUNDATION, 8877 Jennings Road, Eden, New York; THE BAIRD FOUNDATION, P.O. Box 55 Station B, Buffalo, New York; THE BUFFALO FOUNDATION, 812 Genesee Building, Buffalo, New York; WILLIAM J. CONNERS FOUNDATION, c/o HOWARD W. CLOTHIER, 795 Main St., Buffalo, N.Y., JAMES H. CUMMINGS FOUNDATION, 1106 Marine Trust Building, Buffalo, New York; HARRY DENT FOUNDATION, 1508 Genesee Building, Buffalo, New York; FERGUSON FOUNDATION, INC., 333 Ellicott Street, Buffalo, New York; JOSEPHINE GOODYEAR FOUNDATION, 1600 Liberty Bank Building, Buffalo, New York; JULIA R. and ESTELLE L. FOUNDATION, INC., 817 Washington St., Buffalo, New York; THE MARGARET L. WENDT FOUNDATION, 840 Marine Trust Building, Buffalo, New York; THE FARNY R. and GRACE K. WURLITZER, INC., c/o Wurlitzer Co., N. Tonawanda, N.Y., FRED L. EMERSON FOUNDATION, INC., 96 Genesee Street, Auburn, New York; JUDGE WILLIAM J. REGAN, Erie County Surrogate Court, Erie County Hall, Buffalo, New York 14202; HON. MARIO A. PROCACCINO, Commissioner of Taxation and Finance, State of New York, Tax and Finance Building 9, State Campus, Albany, New York; HON. LOUIS J. LEFKOWITZ, Attorney General, State of New York, Capitol, Albany, N.Y., HON. H. B. MOSHER, District Director of Internal Revenue, 111 Hunron Street, Buffalo, New York; HON. GEORGE P. SHULTZ, United States Secretary of Treasury, Washington, D.C., HON. DONALD L. ALEXANDER, Commissioner, Internal Revenue Service, Washington, D.C.,

Defendants.

Amended Complaint

1. The jurisdiction of this Court is based upon 28 USC Section 1343 and all parts thereof; 42 USC Sections 1981 and 1983 and 1985; 42 USC Section 2000a *et seq.;* Constitution of the United States, Fifth Amendment; Constitution of the United States, Fourteenth Amendment; Constitution of the United States, Fifteenth Amendment; the Federal legislation known as "The Civil Rights Act of 1964", and the preceeding Civil Rights Acts enacted by the Congress commencing with the year 1866; Rule 23 of the Federal Rules of Civil Procedure; 28 USC Section 2201 and related sections; the applicable provisions of the Internal Revenue Code, Title 26 USC Section 1 *et* 1 *et seq.*, and more particularly 26 USC Section 170; the amount involved exceeds $10,000.00 excluding costs and interest.

2. This action is brought by the plaintiff on his own behalf and on behalf of all others similarly situated in that there are common questions of law and fact affecting the rights of other persons of the same racial minority group as well as other racial minority groups as concerns equal employment rights, equal protection of laws, freedom from discrimination in the distribution of public moneys or quasi-public moneys and various other issues related thereto. This plaintiff adequately representing the class of which he is a member.

3. One of the objects of this proceeding is to obtain a declaratory judgment and incidental injunctive relief against the defendants named below, declaring that each one is no longer entitled to a tax exemption as authorized by the laws of the United States as well as the laws of the State of New York, as it is operating in violation of the Constitutions of the United States and of the State of New York and

the laws of the United States and the State of New York in that it refuses to employ plaintiff as either an officer, trustee, or director, or in any other executive or administrative position of employ any one of the members of the class represented by the plaintiff herein in the aforesaid positions because of their race and color, refuses to distribute its moneys on an equal basis with others, to the members of the class represented by the plaintiff herein and the plaintiff herein because of their race and color; because they refuse to invest their assets in businesses primarily operated by the plaintiff, members of the class represented by the plaintiff or other minority groups because of the race and color of the groups; and that its operation is in violation of the Membership Corporation Law, the Not-for-Profit Corporation Law, the Estate, Powers and Trust Law, and other laws of the State of New York and the United States, said defendants being as follows:

a. The Statler Foundation
b. Cameron Baird Foundation
c. The Baird Foundation
d. The Buffalo Foundation
e. William J. Conners Foundation
f. James H. Cummings Foundation
g. Harry Dent Foundation
h. Ferguson Foundation, Inc.
i. Josephine Goodyear Foundation
j. Julia R. and Estelle L. Foundation, Inc.
k. The Margaret L. Wendt Foundation
l. The Farny R. and Grace K. Wurlitzer, Inc.
m. Fred L. Emerson Foundation, Inc.

4. Another object or sub-object is for an Order declaring the tax exempt status of each of the foundations named herein for the years 1969, 1970 and 1971 invalid, and further declaring that said foundations were not tax exempt for the years 1969, 1970 and 1971, and directing that the defendant Hon. George P. Schultz in his capacity as Secretary of Treasury, the defendant Hon. Donald L. Alexander in his capacity as Commissioner of the Internal Revenue Service and Hon. H. B. Mosher in his capacity as District Director of Internal Revenue to audit the books of said foundations for the periods when they had wrongfully received tax exempt status and to take such further steps as the law provides.

5. Directing that Hon. Mario A. Procaccino in his capacity as Commissioner of Taxation and Finance of the State of New York and Hon. Louis J. Lefkowitz, Attorney General of the State of New York review the New York State tax returns of the aforesaid foundations and audit them in accordance with the decision herein that they are no longer tax exempt and to take such further steps as the law provides.

6. A further object of this action is money damages be awarded to the plaintiff for his damage as a result of the refusal to employ him because of his race and color, against the following named defendants:

a. The Statler Foundation
b. Cameron Baird Foundation
c. The Baird Foundation
d. The Buffalo Foundation
e. William J. Conners Foundation
f. James H. Cummings Foundation
g. Harry Dent Foundation

h. Ferguson Foundation, Inc.
i. Josephine Goodyear Foundation
j. Julia R. and Estelle L. Foundation, Inc.
k. The Margaret L. Wendt Foundation
l. The Farny R. and Grace K. Wurlitzer, Inc.
m. Fred L. Emerson Foundation, Inc.

7. A further object of this action is for money damages to be awarded to the plaintiff for his damage as a result of the illegal refusal to invest with the plaintiff in formation of a business, which refusal was because of his race and color, against the following defendants:

a. The Statler Foundation
b. Cameron Baird Foundation
c. The Baird Foundation
d. The Buffalo Foundation
e. William J. Conners Foundation
f. James H. Cummings Foundation
g. Harry Dent Foundation
h. Ferguson Foundation, Inc.
i. Josephine Goodyear Foundation
j. Julia R. and Estelle L. Foundation, Inc.
k. The Margaret L. Wendt Foundation
l. The Farny R. and Grace K. Wurlitzer, Inc.
m. Fred L. Emerson Foundation, Inc.

8. A further object of this action is the prohibition of the Surrogate of the County of Erie from appointing any trustee of the Statler Foundation because the Foundation is a membership corporation (now governed by the Not-for-Profit Corporation Law) requiring appointments to

be made by a justice of the Supreme Court, County of Erie, State of New York, and further prohibiting the further appointment of trustees and officers of the Statler Foundation because appointment procedures in lieu of elections as required by Public Law 89-110, Voting Rights Act of 1965, Section 5, 42 USCS 1973, have not been complied with.

9. A further object of this action is the prohibition of the election of trustees and directors to some or all of the foundations listed above because they failed to comply with Public Law 89-110, Voting Rights Act of 1965, Section 5, 42 USCS 1973, as to the proper mode of election of trustees and directors.

10. A further object of this action is the convening of a three judge court pursuant to Title 28 of the United States Code, Section 2281, as the relief sought is an interlocutory or permanent injunction restraining the enforcement, operation or execution of statutes of the State of New York by restraining the action of an officer of such State in the enforcement or execution of said statute and of an order by the applicable administrative agency acting under the statutes of said State upon the grounds that said acts and statute are unconstitutional; also pursuant to 28 USCS Section 2282 because the relief requested is an injunction restraining enforcement, operation and execution of an Act of Congress for repugnance to the Constitution of the United States.

11. That the plaintiff is a member of the black race, a citizen of the United States, of the State of New York, of the County of Erie and a resident of the City of Buffalo; that racially he is a member of a group consisting of

approximately thirty percent of the population of the City of Buffalo and numbering in excess of one hundred thousand people, residing in the City of Buffalo and in the County of Erie and in the State of New York. Plaintiff is a graduate of grade school and high school in Retsof, New York, and attended Alabama A & M College, Alcorn A & M College, Kentucky State College, and University of Kentucky; he received a bachelor of law degree from La Salle Extension University and also from the 20th Century Bible School and New Truth School received a Doctor of Divinity degree. He served with the United States Army in both World War II and the Korean conflict; he has published local periodicals; managed local broadcasts; was president of a tax exempt educational foundation; and in 1964 was the Conservative Party endorsed candidate for State Senator from the 55th Sentatorial District; all of which information was made available to each of the following foundations:

a. The Statler Foundation
b. Cameron Baird Foundation
c. The Baird Foundation
d. The Buffalo Foundation
e. William J. Conners Foundation
f. James H. Cummings Foundation
g. Harry Dent Foundation
h. Ferguson Foundation, Inc.
i. Josephine Goodyear Foundation
j. Julia R. and Estelle L. Foundation, Inc.
k. The Margaret L. Wendt Foundation
l. The Farny R. and Grace K. Wurlitzer, Inc.
m. Fred L. Emerson Foundation, Inc.

12. On or before November 4, 1971, plaintiff made written applications to each of the defendant foundations requesting investments in minority enterprizes and more particularly for the establishment of a bank for minority groups run by a minority administration; a pet food manufacturing company to be operated by a minority; a photo studio; no reply was received; plaintiff then conferred by phone with each foundation, the details of each conversation being as follows:

a. The Statler Foundation acknowledged receipt of the letter but stated that they would not invest in such an activity as such investments are not made by the foundation.

b. The Cameron Baird Foundation acknowledged receipt of the letter but stated they did not invest in that type of activity in that type of area.

c. The Buffalo Foundation acknowledged the communication and at a personal visit stated that it was up to the committee but also stated that the committee's investments were decided solely by the committee.

d. William J. Conners Foundation stated that they made no investments in local organizations.

e. The James H. Cummings Foundation during a personal visit by the plaintiff through its executive director requested a more detailed program which was submitted and then informed the plaintiff that they did not invest in that type of activity in that type of area.

f. The Harry Dent Foundation was contacted not only by letter but by phone with a follow-up phone call and stated that their own program would not accept a program of the type proposed by the plaintiff herein.

g. The Ferguson Foundation, Inc., informed the plaintiff by a Mr. Ferguson that they only invested in listed securities or churches.

h. The Josephine Goodyear Foundation was contacted by phone and the plaintiff was informed that they only invested in listed securities.

i. The Julia R. and Estelle L. Foundation, Inc., stated that they had no funds and therefore couldn't invest particularly as proposed by the plaintiff herein.

j. The Margaret L. Wendt Foundation was phoned and a follow-up note was sent stating that they had no funds.

k. The Farny R. and Grace K. Wurlitzer, Inc., was contacted by phone and the plaintiff was informed that they had no funds and even if they did they only invested in listed securities.

l. The Fred L. Emerson Foundation, Inc., never replied.

13. That the plaintiff has investigated and reviewed the returns of these various foundations and none of them have invested in black groups on a basis anywhere equal or in proportion to the black population in the area although a couple of foundations appear to have made token donations one of which though postdated was actually made after the commencement of this action.

14. That the defendant foundations and charities herein have denied equal benefit of the laws in that they have refused to grant to the plaintiff or his class employment, grants and investments, though they do give employment, grants and investments to whites in the community, said

grants and investments being given as a result of their tax exemption under the laws of the United States, even though the whites are not as qualified or no more qualified for employment, grants and investments than the plaintiff and his class.

15. That claiming a tax exemption as a charitable organization under both state laws and federal laws and claiming an absolute right of choice they reap the benefits of the special exemptions while depriving plaintiff and his class the benefits of their grants and investments solely because of the fact that the plaintiff and his class are black.

16. That as the result of violation of 42 USCS 1983 the plaintiff and members of his class are entitled to money damages.

17. That each of the defendant foundations or charities herein, is controlled by one or more persons who determine who will be employed, to whom grants will be given and to whom investments will be made; that said defendants conspire among their trustees and other employees to deny to the plaintiff and members of his class employment, grants and investments.

18. That as there is among the defendant foundations or charities, employees mutually employed by them who determine to whom employment, grants and investments are made that these charities or foundations have conspired to deny the plaintiff and his class employment, grants and investments solely because of their race.

19. That some or all of these defendant foundations or charities are also controlled by various corporations in that

either they hold controlling interest in the stock of the corporations or that the trustees of the corporations are also trustees of the foundation or charity and that in their interworkings with the corporations they have conspired against the plaintiff and his class in the same manner as aforesaid, denying to them employment, grants and investments.

20. That the aforesaid conspiracies are in violation of 42 USCS 1985 in that these acts are done for the specific purpose of depriving the plaintiff and members of his class the equal protection of the laws or equal privileges and immunities under the law and further that the defendants were acting under color of state law in that their acts were motivated by, and inseparably integrated with the tax exemption given them by the State of New York and with the tax exemption given them under Title 26 of the United States Code.

21. That the defendants Hon. Mario A. Procaccino, Commissioner of Taxation and Finance, State of New York, and Hon. Louis J. Lefkowitz, Attorney General, State of New York, have denied the plaintiff and his class equal protection of laws in that they have failed to prohibit the defendant foundations and charities from discriminately granting moneys and making investments to the exclusion of the plaintiff and his class, while granting said defendant foundations and charities a tax exempt status.

22. That the defendants Hon. George P. Shultz, United States Secretary of Treasury, and Hon. Donald L. Alexander, Commissioner, Internal Revenue Service, and Hon. H.P. Mosher, District Director of Internal Revenue, have denied the plaintiff and his class equal protection of laws

in that they have failed to prohibit the defendant foundations and charities from discriminately granting moneys and making investments to the exclusion of the plaintiff and his class, while granting said defendant foundations and charities a tax exempt status.

23. That the defendant foundations or charities have violated the law in that they have represented to the general public that they are a charitable organization complying with the laws of the State of New York and with the laws of the United States when in fact they have to their own knowledge practiced discrimination in employment, grants and investments, for the purposes of obtaining tangible and intangible items of value from others, all in violation of 42 USCS Section 1985 (3).

24. That some of the defendant foundations or charities have given grants to hospitals in the area which hospitals though claiming to be "charitable" institutions continue to charge the indigent members of the class suing herein the same fees as they charge those with funds in violation of the congressional and judicial requirement that the application of tax exemption for charitable organizations to hospitals be conditioned upon the demonstration that consideration is given to poor persons in need of hospitalization.

25. That Hon. William J. Regan, Erie County Surrogate, has failed to consider the appointment to the Statler Foundation of a member of the class represented herein or the plaintiff and further has allowed the Statler Foundation to continue to practice discrimination in its employment, grants and investments.

WHEREFORE, the plaintiff respectfully requests the Court to award the following relief:

a. Ordering the convening of a three-judge court as required by Sections 2281 and 2282 of 28 USCS because the plaintiff and his class demand an order enjoining the grant of tax exempt status to the defendant foundations and charities,

b. Awarding to the plaintiff, Donald L. Jackson, pursuant to the provisions of 42 USCS 1983, money damages in the amount of One Hundred Fifty Thousand ($150,000.00) Dollars for loss of employment due to the acts prohibited by 42 USCS 1983 and

c. An award of money damages to the plaintiff pursuant to 42 USCS 1983 in the amount of $6,250,000.00 for loss of business due to the deprivation of his rights to obtain funds from the defendant foundations and charities for investment purposes, and

d. The sum of $10,000.00 for each member of the class as money damages against the defendant foundations and charities for violation of 42 USCS 1981, 1983 and 1985, and

e. Awarding attorney's fees pursuant to 42 USCS 200E-5(k) in the amount of Twenty-Five Thousand ($25,000.00) Dollars against the defendant foundations or charities, and

f. A declaratory judgment declaring as a matter of law that the defendants herein have violated the Constitutional rights of the plaintiff and the class he represents, and

g. For such other and further relief as the Court may deem proper.

s/ DAVID M. YELLEN
DAVID M. YELLEN
Attorney for the Plaintiff
Office and Post Office Address
606 Genesee Building
Buffalo, New York 14202
Tel.: 716 852-6900

x/s/ Rev Donald L. Jackson
Rev. Donald L. Jackson

To:

Phillips, Lytle, Hitchcock, Blaine & Huber
Attorneys for Defendants,
James Cummings Foundation, Inc.
& The Buffalo Foundation & Farny R. and
Grace K. Wurlitzer Foundation

Brown, Kelly, Turner, Hassett & Leach
Attorneys for Defendant,
Harry Dent Family Foundation, Inc.

Hodgson, Russ, Andrews, Woods & Goodyear
Attorneys for Defendants,
Ferguson Foundation Inc. &
Cameron Baird Foundation

Williams, Stevens & McCarville
Attorneys for Defendant,
Josephine Goodyear Foundation

Hellings, Morey, Kresse & Rickers
Attorneys for Defendant,
Margaret L. Wendt Foundation

Jaeckle, Fleischmann & Mugel
Attorneys for Defendant,
Julia R. and Estelle L. Foundation, Inc

Raichle, Banning, Weiss & Halpern
Attorneys for Defendant,
The Baird Foundation

William B. Mahoney, Esq.
Attorney for Defendant,
The Statler Foundation

Wiser, Shaw, Freeman, Van Graafeiland,
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Attorneys for Defendant,
Fred L. Emerson Foundation, Inc.

Falk, Siemer, Glick, Tuppen & Maloney
Attorneys for Defendant,
William J. Conners Foundation

Complaint in Transferred Action

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

REV. DONALD L. JACKSON, 494 Masten Avenue, Buffalo, New York 14209, PLEASE FORWARD ALL MAIL TO: P. O. Box 494, Buffalo, New York 14205,

Petitioner,

vs.

THE STATLER FOUNDATION, Statler Hilton Hotel, Buffalo, New York; CAMERION BAIRD FOUNDATION, 8877 Jennings Road, Eden, New York; THE BAIRD FOUNDATION, P.O. Box 55 Station B, Buffalo, New York; THE BUFFALO FOUNDATION, 812 Genesee Building, Buffalo, New York; WILLIAM J. CONNERS FOUNDATION, c/o HOWARD W. CLOTHIER, 795 Main St. Bflo, N. Y., JAMES H. CUMMINGS FOUNDATION, 1106 Marine Trust Building, Buffalo, N. Y., HARRY DENT FAMILY FOUNDATION, 1508 Genesee Building, Buffalo, N. Y., FERGUSON FOUNDATION, INC., 333 Ellicott St., Buffalo, N. Y., JOSEPHINE GOODYEAR FOUNDATION, 1600 Liberty Bank Building, Buffalo, N. Y., JULIA R. and ESTELLE L. FOUNDATION, INC., 817 Washington St., Bflo, N. Y., THE MARGARET L. WENDT FOUNDATION, 840 Marine Trust Building, Bflo., N. Y., THE FARNY R. AND GRACE K. WURLITZER, INC. c/o Wurlitzer Co. N. Towanda, N. Y., FRED L. EMERSON FOUNDATION, INC., 96 Genesee St., Auburn, N. Y., JUDGE WILLIAM J. REGAN, Erie County Surrogate Court, Erie County Hall, Buffalo, New York; HON. MARIO A. PROCACCINO, Commissioner of Taxation and Finance, State of New York, Tax and Finance Building 9, State Campus, Albany, New York; HON LOUIS J. LEFKOWITZ, Attorney General, State of N. Y. Albany, N. Y., HON. GEORGE P. SHULTZ, United States Secretary of Treasury, Washington, D. C.,

Defendants.

No. 74-499.

Complaint in Transferred Action

1. The jurisdiction of this Court is based upon 28 USC Section 1343 and all parts thereof; 42 USC Section 1981, 1982, 1983 and 1985; 42 USC Section 20002 *et seq.*; Constitution of the United States, Article IV, Section 2, Constitution of United States Amendment XIV, Constitution of United States Amendment XV, Constitution of United States, Amendment XVII, Constitution of United States Amendment XXIV, the Federal Legislation known as "The Civil Rights Act of 1964" and "The Civil Rights Act of 1965" and the preceding Civil Rights Acts enacted by the Congress commencing with the year 1866, 28 USC Section 2201 and related Sections; the applicable provisions of the Internal Revenue Code, Title 26 USC Section 1 et 1 *et seq.*, and more particularly 26 USC Section 170, and the amount involved exceeds $10,000.00 excluding cost and intrest.

2. This action is brought by the plaintiff on his own behalf concerns, the right to vote and hold office, equal voting rights, equal protection of laws, freedom from discrimination in the distribution of public moneys or quasi-public moneys and various other issues related thereto.

3. One of the objects of this proceeding is to obtain a declaratory judgment and incidental injunctive relief against the defendants named below, declaring that each one is no longer entitled to tax exemption as authorized by the laws of the United States as well as the laws of the State of New York, as it is operating in violation of the Constitution of the United States and of the State of New York and the laws of the United States and the States of New York in that it refuses to employ plaintiff as either an officer, trustee, or director, or in any other executive or administrative position of employ any one because of his race and

color; defendants foundations refuses to distribute its moneys on equal basis with plaintiff a Black man as they do to Whites; Defendants foundations refuse to invest their assets in businesses primarily operated by Plaintif because of his race, and that their operation is in violation of laws of the State of New York and the United States, said defendants being as follows:

a. The Statler Foundation
b. Cameron Baird Foundation
c. The Baird Foundation
d. The Buffalo Foundation
e. William J. Conners Foundation
f. James H. Cummings Fou. lation
g. Harry Dent Family Foundation
h. Ferguson Foundation, Inc.
i. Josephine Goodyear Foundation
j. Julia R. Estelle L. Foundation, Inc.
k. The Margaret L. Wendt Foundation
l. The Farny R. and Grace K. Wurlitzer, Inc.
m. Fred L. Emerson Foundation, Inc.

4. Another object or sub-object is for an Order declaring the tax exempt status of each of the foundations named herein for the years 1969, 1970 and 1971 invalid and further declaring that said foundations were not tax exempt for the years 1969, 1970 and 1971, and directing that the defendant Hon. George P. Shultz in his capacity as Secretary of Treasury, to audit the books of said foundations for the periods when they had wrongfully received tax exempt status and to take such further steps as the law provides.

5. Directing that Hon. Mario A. Procaccino in his capacity as Commissioner of Taxation and Finance of the State of New York and Hon. Louis J. Lefkowitz, Attorney General of the State of New York review the New York State tax returns of the aforesaid foundations and audit them in accordance with the decision herein that they are no longer tax exempt and to take such further steps as the law provides.

6. A further object of this action is money damages be awarded to the plaintiff for his damage as a result of the refusal to allow him to vote, and to employ and to invest in plaintiff businesses because of his race and color, against the following named defendants:

a. The Statler Foundation
b. Cameron Baird Foundation
c. The Baird Foundation
d. The Buffalo Foundation
e. William J. Conners Foundation
f. James H. Cummings Foundation
g. Harry Dent Family Foundation
h. Ferguson Foundation, Inc.
i. Josephine Goodyear Foundation
j. Julia R. and Estelle L. Foundation, Inc
k. The Margaret L. Wendt Foundation
l. The Farny R. and Grace K. Wurlitzer, Inc.
. fred L. Emerson Foundation, Inc.

7. A further object of this action is for money damage to be awarded to the plaintiff for his damage as a result of the illegal refusal to invest with the plaintiff in formation of a

business, which refusal was because of his race and color, against each of the defendant foundations.

8. A further object of this action is the prohibition of the Surrogate of the County of Erie from appointing any trustee of the Statler Foundation because the Foundation is a membership corporation (now governed by the Not-for-Profit Corporation Law) requiring appointments to be made by a justice of the Supreme Court, County of Erie, State of New York, and further prohibiting the further appointment of trustees and officers of the Statler Foundation because appointment procedures in lieu of elections as required by Public Law 89-110, Voting Rights Act of 1965, Section 5, 42 USCS 1973, have not been complied with, and further prohibition of the Surrogate of the County of Erie from going beyond its authority, by appointing life time directors or trustees of the Statler Foundation at life time salaries of $30,000 per year.

9. A further object of this action is the prohibition of the election of trustees and directors to some or all of the foundations because they failed to comply with Public Law 89-110, Voting Rights Act of 1965, Section 5, 42 USCS 1973, as to the proper mode of election of trustees and directors.

10. A further object of this action is the convening of a THREE JUDGE COURT, pursuant to Title 28 of the United States Code, Section 2881, and 2884, as the relief sought is an interlocutory or permanent injunction restraining the enforcement, operation or execution of statutes of the State of New York by restraining the action of an Officer or such State in the enforcement or execution of said statute and of an order by the applicable administrative agency act-

ing under the statutes of said state upon the grounds that said acts and Statute are unconstitutional; also pursuant to 28 USCS Section 2282 and 2284 because the relief requested is an injunction restraining enforcement operation and execution of an Act of Congress for repugnance to the Constitution of the United States.

11. That the PLAINTIFF IS A MEMBER OF THE Black race, a citizen of the United States of the State of New York, of the County of Erie and a resident of the City of Buffalo; plaintiff is a graduate of grade school and high school in Retsof, New York, and attended Alabama A & M College, Alcorn A & M College, Kentucky State College, and taken courses from the University of Kentucky; received a Bachelors of Law Degree, from LaSalle Extension University after studying law 4 years, studying religion from 20th Centraury Bible School and New Truth School and receive a Doctor of Divinity Degree. Plaintiff served with the United States Army in both World War II and the Korean conflict; and received Honorable Discharge; he has published local periodicals; managed local boardcasts; was president of a tax exempt educational foundation for over 7 years; and in 1964 was the Conservative Party endorsed candidate for State Senator from the 55 Senatorial District; all of which information was made available to each of the defendant foundations.

12. On or before November 4, 1971, plaintiff made written applications to each of the defendant foundations requesting investments in minority enterprises and more particularly for the establishment of a bank for minority groups run by a minority administration; a pet food manu-

facturing company to be operated by a minority; a photo studio; no reply was received; plaintiff then conferred by phone with each foundation the details of each conversation being as follows:

a. The Statler Foundation acknowledged receipt of the letter but stated that they would not invest in such an activity as such investments are not made by the foundation.

b. The Cameron Baird Foundation acknowledged receipt of the letter but stated they did not invest in that type of activity in that type of area.

c. The Buffalo Foundation acknowledged the communication and at a personal visit stated that it was up to the committee but also stated that the committee's investments were decided solely by the committee.

d. William J. Conners Foundation stated that they made no investments in local organizations.

e. The James H. Cummings Foundation during a personal visit by the plaintiff through its executive director requested a more detailed program which was submitted and then informed the plaintiff that they did not invest in that type of activity in that type of area.

f. The Harry Dent Family Foundation was contacted not only by letter but by phone with a follow-up phone call and stated that their own program would not accept a program of the type proposed by the plaintiff.

g. The Ferguson Foundation, Inc., informed the plaintiff by a Mr. Ferguson that they only invest in listed securities or churches.

h. The Josephine Goodyer Foundation was contacted by phone and the plaintiff was informed that they only invest in listed securities.

i. The Julia R. and Estelle L. Foundation, Inc., stated that they had no funds and therefore couldn't invest particularly as proposed by plaintiff he—.

j. The Margaret L. Wendt Foundation was phoned and a follow-up note was sent stateing that they had no funds.

k. The Farny R. and Grace K. Wurlitzer, Inc., was contacted by phone and the plaintiff was informed that they had no funds and even if they did they only invested in listed securities.

l. The Fred L. Emerson Foundation, Inc., never replied.

13. That plaintiff has investigated and reviewed the taxs returns of these various foundations and none of them have invested in black groups on a basis anywhere equal or in proportion to the Black population in the area, infect none of the defendant foundation has ever invested in any Black business, a couple of foundations appear to have made in token donations one of which though postdated was actually made after the commencement of this action.

14. That the letter plaintiff mailed to each of the defendants foundations on November 4 1971, asking for scholarships for my children, was rejected by each of the defendant foundations, because it was not their policy to give educational grants to Blacks. Numerous requests were made to each of defendant foundations between 1969 and 1971, and on each occasion I was rejected because of my race.

That each of the defendant foundations has assets about the figure indicated after each name:

The Statler Foundation	$11,407,420
Cameron Baird Foundation	$ 4,346,322
The Baird Foundation	$ 2,769,575
The Buffalo Foundation	$ 8,400,000
william J. Conners Foundation	$ 1,000,000
James H. Cummings Foundation	$ 2,000,000 or $ 6,000,000
cHarry Dent Family Foundation	$ 2,813,010
Ferguson Foundation	$ 159,000
Josephine Goodyear Foundation	$ 1,659,374
Julia R. and Estelle L Foundation	$ 6,333,077
The Margaret L. Wendt Foundation	$ 742,796
The Farny R. and Grace K. Wurlitzer, Inc., Foundation	$ 1,522,052 or $ 8,000,000
Fred L. Emerson Foundation	$19,475,106

The following foundations are controlled by the family by all or majority of the Directors are members of the family.

Cameron Baird Foundation
The Baird Foundation
Harry Dent Family Foundation
Josephine Goodyear Foundation
Ferguson Foundation
Fred L. Emerson Foundation

the following foundations are controlled by the corporation, by the same officers of the foundation are the same officers of the corporation that donated the funds.

Cameron Baird Foundation
The Baird Foundation
William J. Conners Foundation
Ferguson Foundation
Julia R. and Estelle L.
The Frany R and Grace K. Wurlitzer, Inc.
Fred L. Emerson

15. That the defendant foundations and charities herein have HAVE DENIED PLAINTIFF EQual benefit of the laws in that they have refused to grant to plaintiff grants, employment and investments, though they do give employment, grants and investments to whites in the community, said grants and investments being given as a result of their tax exemption under the laws of the United States, even though the whites are not as qualified or no more qualified for employment, grants and investment that plaintiff.

16. That claiming a tax exemption as a charitable organization under both state laws and federal laws and claiming an absolute right of choice they reap the benefits of the special exemptions while depriving plaintiff the benefits of their grants and investments solely because plaintiff is Black.

17. That as the results of violation of 42 USCS 1983, 1981, 1982, plaintiff is entitled to money damages.

18. That each of the defendant foundations or charities herein, is controlled by one or more persons who determine who will be employed, to whom grants will be given and to

whom investments will be made, that said defendants conspire among their trustees and other employees to deny to plaintiff grants and investments and employment.

19. That as there is among the defendant foundations or charities, employees mutually employed by them who determine to whom employment, grants and investments are made that these charities or foundations have conspired to deny to plaintiff employment, grants and investments solely because of his race.

20. That some or all of these defendant foundations or charities are also controlled by various corporations in that either they hold controlling intrest in the stock of the corporations or that that trustees of the corporations are also trustees of the foundation or charity and that in their interworkings with the corporations they have conspired against plaintiff in the same manner as aforesaid, denying to plaintiff employment, grants and investments.

21. That the aforesaid conspiracies are in violation of 42 USCS 1985 in that these acts are done for the specific purpose of depriving the plaintiff and equal protection of the laws or equal privileges and immunities under the law and further that the defendants foundations were acting under color of state law in that their acts were motivated by, and inseparably integrated with the tax exemption given them by the State of New York and with the tax exemption given them under Title 26 of the United States Code.

22. That the defendants Hon. Mario A. Procacino, Commissioner of Taxation and Finance, State of New York, and Hon. Louis J. Lefkowitz, Attorney General, State of New York, have denied plaintiff equal protection of laws in that

they have failed to prohibit the defendant foundations and charities from discriminately granting moneys and making investments to the exclusion of the plaintiff, while granting said defendant foundations and charities a tax exempt status.

23. That the defendant Hon. George P. Shultz, United States Secretary of Treasury, have denied plaintiff equal protection of laws in that they have failed to prohibit the defendant foundations and charities from discriminately granting moneys and making investments to the exclusion of plaintiff, while granting said defendant foundations and charities a tax exemption status.

24. That the defendant foundations or charities have violated the law in that they have represented to the general public that they are a charitable organization complying with the laws of the State of New York and with the laws of the United States when in fact they have to their own knowledge practiced discrimination in employment, grants and investments, for the purpose of obtaining tangible and intangible tems of value from others, all in violation of 42 USCS Section 1985(3).

25. that Hon. William J. Regan, Erie County Surrogate, has failed to consider the appointment to the Statler Foundation of plaintiff and further has allowed the Statler Foundation to continue to practice discrimination in its employment, grants and investments.

WHEREFORE, the plaintiff respectfully request the Court to award the following relief:

a. ordering the convening of a three-judge court as required by Sections 2281, 2282 and 2284 of 28 USCS because

plaintiff demand an order enjoining defendants from depriving plaintiff the right to vote and hold office and to enjoining the grant of tax exempt status to the defendant foundations and charities.

b. awarding to the plaintiff, Rev. Donald L. Jackson, pursuant to the provisions of 42 USCS 1983, money damages in the amount f One hundred fifty thousand ($150,000.00) Dollars for depriving plaintiff the right to vote and hold office acts prohibited by XV Amendment to United States Constitution.

c. Awarding to plaintiff, Rev. Donald L. Jackson, pursuant to the provisions of 42 USCS 1983, money damages in the amount of $600,000.00 Six Hundred Thousand Dollars, from the Statler Foundation, and One Hundred Fifty Thousand ($150,000.00) for loss of employment due to the acts prohibited by 42 USCS 1983 and from each of the other 12 defendant foundations or charities and

d. An award of money damages to the plaintiff pursuant to 42 USCS 1983 in the amount of $6,500,000.00 for loss of business due to the deprivation of his rights to obtain funds from the defendant foundations and charities for investment purposes, and

e. a declaratory judgment declaring as a matter of law that he defendants herein have violated the Constitutional rights of the Plaintiff and

f. for such other and further relief as the Court may deem proper.

EXHIBITS 1, 2, attached herewith.

Complaint in Transferred Action

NOTE TO THE COURT:

THIS LAWSUIT WAS FILED IN THE WESTERN DISTRICT OF U.S. COURT FOR NEW YORK STATE. ON DEC. 27, 1971, docket No. CIV 1971-592, March 7, 1973, Judge Curtin, dismissed the lawsuit, stating there was no STATE ACTION, over 10 cases were cited, this case was appealed the the Court of Appeals using the same court cases, and the Court of Appeals for the 2nd Circuit, reversed Judge Curtins decision.

The Court of Appeal stated that Plaintiff, could not ask to have the foundations tax exemption revoked unless United States Treasury and the New York State Tax Commissioner was a party, and suggested that the complaint be amended. The Court of Appeal also stated that i could not represent a foundation, for I was not an lawyer, I have left out of this cimplaint any claim for the foundation. The Amended complaint was filed in the District Court for the Western District of New York, Judge Curtin, immediately gave each defendant foundation 40 days to answer after the complaint was served. Judge Curtins reserved decision on permission to amend the complaint. This amended complaint was argued before Judge Curtin, with a request for a Three Panel Judge Court, on March 11, 1974. The 1964 and 1965 Civil Rights Act clearly states the Court of Jurisdiction list the United States DISTRICT COURT FOR THE DISTRICT OF COLUMBIA.

The Congressional Record United States Senate for October 22, 1965 Page 28368 and 28369, Senator Ervin, offered an Amendment to the Voting Rights Bill, to give the District Court for the District of Columbia, permission to removal of cases to other jurisdiction for the convenicence

of witnesses and for the ends of justice, the amendment as defeated leaving jurisdiction only with the United States District Court for the District of Columbia. The reason that the Congress established in the law continual pages of the discussion, indicated he Seanate, found that Judge in the District Court, would not rule against local officials for discriminating. This same situation exist here in Western New York, The Statler Foundation, two trustees Mr. Crotty and Mr. Mahoney, are former Erie County Democratic Chairmans, and one of them recommended the present Judge o the position of U. S. Attorney, and for the Judgeship. There s only one Judge, in this Court now. Judge Henderson, died. I cite these fact, for its evident that attorneys for defendant foundations will fight to keep this case in the District Court where they have a friend.

The Act requires that a Three-Panel Court be appointed within 20 ays after it has been requested, and that an immediate hearing, this will never be accomplished here in this Western District Court of New York State. Justice Delayed is Justice Denied. The amended complaint, filed in the Western District Court of New York STate, will be withdrawn as soon as the District Court of the District of Columbia, assumes jurisdiction of this case.

s/ REV. DONALD L. JACKSON,
(Rev. Donald L. Jackson)

state of new york
COUNTY OF ERIE
CITY OF BUFFALO

REV. DONALD L. JACKSON, being duly sworn deposes and says that he is Petitioner in this action that he has read the complaint and knows that contents thereof: that the same is true to the knowledge of deponent, except as to the matters therein stated to be alleged on information and belief, and as to these matters he believes it to be rue.

/s/ REV. DONALD L. JACKSON,
(Rev. Donald L. Jackson)

SWORN TO BEFORE ME THIS 26th DAY OF MARCH 1974.

/s/ Rosemary A. Ligotti,
Notary Public State of New York,
My comm. Expires March 30, 1975.

(Exhibits 1 and 2, excerpts from Congressional Record—Senate, pp. 28368-28369 (October 22, 1965) omitted.)

Memorandum and Order Transferring Action

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

REV. DONALD L. JACKSON,

Plaintiff,

v.

THE STATLER FOUNDATION, *et al.*,

Defendants.

Civil Action No. 74-499.

The plaintiff herein filed this action in this Court on March 28, 1974, alleging in part exclusive jurisdiction in this Court by reason of the Voting Rights Act of 1965, 42 U.S.C. 1973. From a reading of the complaint in this action, this Court concludes that there is no showing of a cause of action under 42 U.S.C. 1973.

Furthermore, plaintiff's complaint alleges that this lawsuit was previously filed in the United States District Court for the Western District of New York and is presently pending therein.

In the instant case, all but one of the seventeen named defendants are residents of New York, and the locally named defendant is George P. Shultz, who is sued in his capacity as Secretary of the Treasury. The plaintiff's suit seeks to compel the Secretary to audit the books of the named Foundation defendants. Without passing on the

merits, this action so far as it pertains to the Secretary of the Treasury is in the nature of a mandamus, and it is clear that the United States District Court for the Western District of New York would have jurisdiction over such an action. "The district courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff." 28 U.S.C.A. § 1361.

Title 28, United States Code Annotated, section 1404(a), states: "For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought."

This Court finds that for the convenience of parties and witnesses, and in the interest of justice, transfer of this case to the United States District Court for the Western District of New York is proper.

Wherefore, it is this 2nd day of April, 1974, *sua sponte*,

ORDERED that this action be and the same is hereby transferred to the United States District Court for the Western District of New York.

WM. B. JONES,
Judge.

Rev. Donald L. Jackson,
P. O. Box 494,
Buffalo, New York 14205.

Nathan Dodell,
Assistant United States Attorney,
United States Courthouse,
Washington, D. C. 20001.